

Application Serial No. 10/804,799

REMARKS

1. Applicant thanks the Office for communicating the allowance of claims 1, 2, 4, 11, 30, 31, 33 and 40.

2. **35 U.S.C. § 112**

Claims 12, 18, 25, 41, 47, 54 and 59 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. However, the Office's rationale in issuing the present rejection appears to have little merit.

The Office first states that each of the identified claims omits essential elements, wherein the omitted elements are alleged to comprise: "wherein each of said distributed clients, each running on an associated computational device, determines relevance of an advice message by evaluating a relevance clause of said advice message, while automatically retrieving properties of the computational device on which said client runs."

The Office further states that the above elements comprise concrete results that would further enable the elements of claims 12, 18, 15, 41, 47, 54, and 59 to produce concrete results. Applicant first notes that the proper authority under which to reject a claim for failure to describe a tangible result is 35 U.S.C § 101, rather than § 112. Because the present rejection fails to state the proper authority for the rejection, it is improper on this ground alone.

Applicant also notes that even if the authority under which the rejection is made were not improper, failure to describe a tangible result is an issue that arises with claims to computer-implemented methods. While claims 41 and 47 are directed to methods, the remaining rejected claims are directed to systems and/or apparatus. Therefore, the present rejection is inappropriate to claims 12, 18, 25, 54 and 59, and is therefore improper.

Applicant next notes that each of the claims in question describes a tangible result:

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Claim 12: wherein said client implements associated actions received from said console;

Claim 18: wherein if said characteristics are identified, said client running on and associated with a computer implements associated actions received from said console on said associated computer;

Claim 25: wherein overhead on said server is reduced by a ratio of relays to clients;

Claim 41: each client processing said advisories based upon a relevance determination, inspecting its associated computer, and reporting any relevance determination and actions to said server;

Claim 47: wherein if said characteristics are identified, said client implements associated actions received from said console;

Claim 54: reducing overhead on said server a by a ratio of relays to clients; and

Claim 59: distributing each file collection once to said relay, which in turn distributes said file collection to said server.

Thus, it is incorrect that any of the claims fail to describe a tangible result. The present rejection is improper on this ground alone.

Applicant next notes that the allegation that the suggested claim elements are essential elements is incorrect. Several embodiments are described in ¶¶ 0014-0027 of the U.S. published patent application no. 2005/0086534. Not one of those embodiments describes the elements in question as being essential. The remainder of the specification describes additional embodiments that may include the features in question. Therefore, the present rejection is improper on this ground alone. Applicant also notes that the language in question was added to certain of the independent claims by a previous amendment. Applicant specifically stated that the only reason for the amendment was expediency in deference to the Office policy of compact prosecution.

Applicant further notes that the elements in question are only relevant to claims 12, 18, 41, 47. Amendment of the remaining claims as suggested would possibly render the claims indefinite because the subject matter is not relevant to the claim. For example:

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Claim 25: Claim 25 has nothing to do with determining relevance of and advice message. It is directed to an apparatus for reducing server overhead;

Claim 54: Claim 54 has nothing to do with determining relevance of and advice message. It is directed to method for reducing server overhead.

Applicant further notes that claims 41 and 59 already include language similar to that suggested. Thus, amending these claims by including the suggested elements would render the language of these claims redundant and possibly render the claims indefinite.

For all of the above reasons, the present rejection is deemed to be improper. In spite of the foregoing, Applicant amends claims 12, 18 and 47 to include the suggested language, or language that is substantially equivalent to the suggested language.

No new matter is added by way of the above amendments. Such amendments are made only for the purpose of expediency in deference to the Office policy of compact prosecution. It is not to be taken as agreement with the Office's position, nor is it evidence of intent to sacrifice claim scope. Applicant expressly reserves the right to pursue patent protection of a scope it reasonably believes it is entitled to in one or more future submissions to the Office.

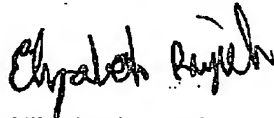
3. For the record, Applicant respectfully traverses any and all factual assertions in the file that are not supported by documentary evidence. Such include assertions based on findings of inherency, assertions based on official notice, and any other assertions of what is well known or commonly known in the prior art.

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CONCLUSION

In view of the foregoing, the Application is deemed to be in allowable condition. Accordingly, Applicant respectfully requests reconsideration and prompt allowance of the claims. Should the Examiner have any questions regarding the Application, she is invited to contact Applicant's agent at 650-474-8400.

Respectfully submitted,



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